



# Procurement Guidelines for Government Agencies

To foster markets for recovered materials and reduce the amount of solid waste requiring disposal, consumers, including corporations and government agencies, need to buy products made from recovered materials. Such a commitment is an important step in sending a message to industry that markets for recovered materials exist. The Environmental Protection Agency (EPA) has issued "procurement guidelines" requiring government agencies to buy products made with recovered materials. The guidelines provide recommendations for implementing certain requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA).

To date, EPA has published five guidelines, designating the following specific items containing recovered materials for procurement by government agencies:

- *Paper and paper products,*
- *Lubricating oils,*
- *Retreaded tires,*
- *Building insulation products, and*
- *Cement and concrete containing fly ash.*

Once EPA issues a procurement guideline designating a specific item, procuring agencies have one year to meet the guideline's requirements.

Procurement Guideline for Paper and Paper Products, 40 CFR Part 250, 53 *FR* 23546 (June 22, 1988)

Procurement Guideline for Lubricating Oils Containing Refined Oil, 40 CFR Part 252, 53 *FR* 24699 (June 30, 1988)

Procurement Guideline for Retread Tires, 40 CFR Part 253, 53 *FR* 46558 (November 17, 1988)

Procurement Guideline for Building Insulation Products Containing Recovered Materials, 40 CFR Part 248, 54 *FR* 7328 (February 17, 1989)

Procurement Guideline for Cement and Concrete Containing Fly Ash, 40 CFR Part 249, 48 *FR* 4230 (January 28, 1983)



## To Whom Do the Guidelines Apply?

RCRA defines procuring agencies to include federal, state, and local agencies using appropriated federal funds, and their contractors. The requirements of a particular guideline apply only if the procuring agency purchases more than \$10,000 a year worth of the guideline item. For example, if a county government agency spends more than \$10,000 a year on paper, and part of that money is from appropriated federal funds, then the county government is a "procuring agency" for paper and must follow the procurement guideline for paper and paper products.

Purchases unrelated or incidental to the purpose of federal funding are not subject to RCRA Section 6002. Thus, they are not subject to the procurement guidelines. However, when it is not apparent whether a purchase is subject to RCRA, EPA encourages procuring agencies to follow the guidelines to help expand markets for products made of recovered materials.

## What Are the RCRA Section 6002 Requirements?

### *Review and Revise Specifications*

RCRA requires procuring agencies to review their specifications for the designated items and to revise them to allow procurement of products containing recovered material. Procuring agencies should eliminate requirements that specifically exclude the use of recovered materials. In addition, procuring agencies should revise performance standards that in effect exclude items containing recovered materials and that are more stringent than necessary to satisfy the agency's needs.

For example, if an agency has a specification that precludes the use of retreaded tires, it must be replaced, preferably with a performance standard that specifies relevant performance factors for tires, such as tread wear, burst strength, and stopping distance.

### *Establish an Affirmative Procurement Program*

Each procurement guideline contains EPA's recommendations for establishing an effective affirmative procurement program. However, each procuring agency may design its own program, so long as it meets the RCRA requirements.

All affirmative procurement programs must have four components:

1. a preference program,
2. a promotion program,
3. procedures for obtaining and verifying estimates and certifications of the content of recovered materials, and
4. annual review and monitoring.

### **Preference Program**

The statute provides three options for a preference program:

- *Minimum-content standards*, which identify the minimum content of recovered materials that an item should contain; procuring agencies may include these standards in their specifications for purchasing an item;

- *Case-by-case procurement*, open competition between products made of virgin materials and products made of recovered materials; procuring agencies must exercise a preference for the latter; or
- *Other*, any approach which is substantially equivalent to the above approaches.

The procurement guidelines *recommend* that agencies consider the following approaches for the five items designated thus far:

*Paper and paper products*: Specific minimum-content standards for paper and paper products. For newsprint, tissue packaging, and paperboard categories, postconsumer minimum-content standards are recommended. For printing and writing papers, "wastepaper" minimum content standards are recommended. ("Wastepaper" includes both postconsumer materials and certain preconsumer wastes.)

*Lubricating oils*: Minimum re-refined oil content standards for engine lubricating oils, hydraulic fluids, and gear oils at no lower than 25 percent of the basestock.

*Retreaded tires*: Case-by-case procurement programs consisting of two components—(1) procurement of retreading services for the agencies' used tire casings, and (2) procurement of replacement tires through competition among vendors of new and retreaded tires. If an agency is unable to carry out one component of the guideline—for example, because of unavailability—then it should implement the other component and continue to attempt to carry out the unrealized component.

*Building insulation*: Specific minimum-content standards for insulation materials commercially available with recovered materials, such as cellulose, perlite composite board, most of the plastic foams and boards, and rock wool. When purchasing insulation materials for which minimum-content standards have not been established (e.g., fiberglass and polystyrene rigid foam), agencies should use case-by-case procurement.

*Cement and concrete containing fly ash*: Inclusion of provisions in all construction contracts to allow for the use of cement or concrete containing fly ash.

#### **Promotion Program**

Agencies must actively promote their desire to buy recycled products. For example, they may choose to include explicit statements in solicitations for bids and proposals, discuss their commitment to recycling at prebidders' conferences, issue general announcements about their procurement preferences, and print a recycling statement or logo on official documents.

#### **Estimation and Certification**

Vendors must estimate the percentage of and certify the actual content of recovered material in their products. Such estimates and certifications are most easily expressed as a percentage of total content.

Vendors must certify the percentage of recovered material actually used in performance of the contract and must make their own arrangements for obtaining this information from the manufacturer. Vendors usually discuss product specifications and availability with manufacturers before submitting a bid; information for certification can be obtained at that time. The certification then becomes part of the contract awarded to the successful vendor.

### Annual Review and Monitoring

During the year, procuring agencies should review the range of estimates and certifications they received to determine whether they are using the highest percentage of recovered materials.

While the EPA guidelines recommend minimum-content standards, procuring agencies should adjust the standards when market conditions warrant a change. For example, if the data suggest that a sufficient number of bids would have been submitted in response to higher standards, then agencies should consider raising their minimum-content standards. Conversely, if there is a lack of competition, agencies may consider lowering their standards.

### When May an Agency Purchase Items Not Containing Recovery Materials?

Procuring agencies may choose not to purchase a guideline item containing recovered materials if:

- a guideline item's price is unreasonable;
- applying minimum-content standards results in inadequate competition;
- obtaining designated items results in unusual and unreasonable delays; or
- guideline items do not meet all reasonable performance specifications.

The word "reasonable" is key to the above conditions. A procuring agency cannot exclude guideline items based on unreasonable needs. For example, recycled paper cannot be excluded based on a brightness specification that is higher than needed.

### How Are the Guidelines Enforced?

Anyone who is injured by the failure of an agency to carry out the law may take civil action, either through that agency's appeal procedures, the General Accounting Office's appeal procedures, or the federal courts. There are no provisions in RCRA for federal enforcement of the guidelines.

### How Is EPA Helping to Implement the Guidelines?

EPA has established several mechanisms for assisting federal and non-federal agencies in setting up programs and for helping vendors market their recovered materials to procuring agencies. These include a telephone hotline and frequently updated lists of manufacturers and vendors of products designated in the guidelines.

Copies of the guidelines listed in the box on the front cover, lists of manufacturers and vendors, and information on purchasing guideline items can be obtained from the procurement hotline by calling (703) 941-4452.